ness is an arbitrary and needless obstruction of justice is borne out by the marked tendency to modify it either by decision[16] or by legislation.[17] The Massachusetts statute, which permits such impeachment either by cross-examination or by extrinsic testimony, irrespective of surprise, but forbids general attacks upon character, is typical of the better view.

RELATION OF PRINCIPAL AND THIRD PARTY ON RATIFICATION OF UNAUTHORIZED CONTRACTS.—Authorities are united on the proposition that the ratification of a contract made by an unauthorized agent binds the principal by relation from the time of the original transaction.[1] This unanimity disappears, however, when the principal upon ratification invokes this doctrine to bind the third party from that time.[2] The English courts have always adhered strictly to the maxim that ratification is equivalent to prior authority, and hold the third party[3] even though he withdrew his assent and notified the assumed principal prior to ratification.[4] They deem him free from the obligation only when he and the unauthorized agent mutually agree to rescind.[5]

The decisions of American courts upon this question are openly at variance.[6] In several jurisdictions, for instance, ratification will not bind the third party unless he again assents to the contract,[7] and it must be admitted that this result follows naturally from orthodox principles of contract, which require mutuality of obligation before either party is bound. These courts, however, are unwilling to carry the doctrine to its logical conclusion, for although they hold the original contract a nullity, they nevertheless refuse to regard the subsequent ratification and assent as the creation of a new contract, but deem the agreement to relate to the time of the original transaction. The foregoing view is often sought to be supported by a considerable number of decisions in other jurisdictions which may, however, be distinguished,

[16]Hurlburt *v.* Bellows *supra;* Selover *v.* Bryant *supra.*

[17](Mass.) Rev. Laws cl. 175, § 24; (Eng.) 17 & 18 Vict. cl. 125, § 22; (Vt.) (1886) Pub. Stat. 1906, § 1597; (Ind.) Burns Anno. Stat. § 531; (Cal.) Code Civ. Pro., §§ 2049, 2052; (Ore.) Lord's Ore. Laws, § 861.

[1]Mechem, Agency, § 167; Story, Agency, (8th ed.) § 239.

[2]Mechem, Agency, § 179; Story, Agency, (8th ed.) §§ 245-248; Atlee *v.* Bartholomew (1887) 5 Am. St. Rep. 103, 109; 5 Law Quar. Rev. 440; 9 Harv. L. Rev. 60.

[3]Routh *v.* Thompson (1811) 13 East 274; Hagedorn *v.* Oliverson (1814) 2 M. & Selw. 485.

[4]Bolton Partners *v.* Lambert (1889) L. R. 41 Ch. D. 295; *In re* Copper Mines (1890) L. R. 45 Ch. D. 16; *In re* Tiedemann and Lederman *Frères* (1899) 2 Q. B. 66.

[5]Walter *v.* James (1871) L. R. 6. Exch. 124.

[6]Some commentators assume that they unanimously negative the conclusions reached in England. See the controversy indicated by 5 Am. St. Rep. 109 and 24 Am. L. Rev. 580.

[7]Dodge *v.* Hopkins (1861) 14 Wis. 686; Atlee *v.* Bartholomew (1887) 69 Wis. 43; Clews *v.* Jamieson (1898) 89 Fed. 63. These cases are admittedly based on the decision in Townsend *v.* Corning (N. Y. 1840) 23 Wend. 435, which is cited as standing for this doctrine. This case, however, decides only that where an agent fails to execute a sealed instrument in his principal's name, the principal cannot ratify the act so as to bind the third party, a proposition which has been established since the anonymous cases (1405) Y. B. 7 H. IV. 34 pl. 1 and (1586) Gobolt, 109, pl. 129.

and reconciled with the rule laid down by the English courts. These are cases in which a principal who ratifies an unauthorized contract for the purchase of land by suing for its specific performance, is denied relief.[8] Equity is reluctant to aid one who has not absolutely bound himself, and insists upon a mutuality of right to equitable remedies,[9] which is lacking here before the principal begins suit. The result reached in these cases is, therefore, due solely to this equitable principle, and is not in opposition to the English rule. In the absence of the element of specific performance, these same courts, unite with the weight of American authority in adhering to the English doctrine.[10]

The entire theory of ratification, however, is an anomaly in the law of contracts, for in the original transaction the third party does not receive the consideration which he really desires, the obligation of the principal. While the doctrine has been so well established in cases where the third party is suing that it can now no longer be questioned, its anomalous character should prevent its further extension unless for the sake of equitable results. But to allow the principal freedom to balance the relative benefits of repudiation and ratification while the third party stands helpless is surely the reverse of equity.[11] The third party should therefore be left free to withdraw on discovering the agent's want of authority. But since no court consistently treats the original contract as a nullity and since, furthermore, the third party has manifested his assent, he should be compelled to notify the principal of his intention to repudiate, and until he does so, the latter may meet his expressed assent by ratification, thus making a contract of mutual promises.[12] It is submitted that by thus regarding his indicated assent as continuing until revocation, he is subjected to no undue hardship, especially since he receives the agent's warranty of authority,[13] which, while it is not what he desired, may nevertheless be of substantial value.

The foregoing argument that the doctrine of ratification should be limited to cases where it produces just results finds strong support in the unanimous refusal of the American courts to allow the principal to ratify at a time when it would no longer be legally possible for him to make the agreement itself.[14] Thus, a Federal court in the case of *Kline Brothers & Co.* v. *Royal Ins. Co.* (1911) 192 Fed. 398, recently refused to aid a principal who sought to recover upon a fire insurance policy which he had ratified after the loss had occurred. The unfairness of permitting ratification under such circumstances is obvious, but even here the English courts allow recovery[15] and thus give logical completeness to the anomaly of ratification at the expense of justice.

[8]Wilkinson *v.* Harwell (1846) 13 Ala. 660; Cowan *v.* Curran (1905) 216 Ill. 598.

[9]Pomeroy, Specific Performance of Contracts, (2nd ed.) § 160. See Wylson *v.* Dunn (1887) L. R. 34 Ch. D. 569.

[10]Hills *v.* McMunn (1908) 232 Ill. 488; Andrews *v.* Ins. Co. (1883) 92 N. Y. 596; Hall *v.* Ins. Co. (1889) 57 Conn. 105; McClintock *v.* Oil Co. (1892) 146 Pa. 144, 161-2.

[11]See Atlee *v.* Bartholomew *supra;* Dodge *v.* Hopkins *supra.*

[12]And mere lapse of time should not relieve the third party, since he does not, as in the case of an offer, intend that his assent should continue only for a reasonable period.

[13]Collen *v.* Wright (1857) 8 E. & B. 647.

[14]McCracken *v.* San Francisco (1860) 16 Cal. 591.

[15]Williams *v.* Insurance Co. (1876) L. R. 1 C. P. D. 757.